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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,032	12/30/2003	John Kenneth Hooker	9D-HR-25022	8280
7590	05/03/2005		EXAMINER [REDACTED]	CARTAGENA, MELVIN A
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102			ART UNIT [REDACTED]	PAPER NUMBER 3754
DATE MAILED: 05/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/749,032	HOOKER, JOHN KENNETH	
	Examiner Melvin A. Cartagena	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5282004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of an optical sensor for a dispenser in the reply filed on February 16, 2005 is acknowledged. The traversal is on the ground(s) that the claims in Group I and Group II are clearly related. This is not found persuasive because the invention of Group I and Group II have each different utility and classification.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,469,150 to Grimaldi.

Grimaldi shows a dispenser for automatically dispensing a beverage into a recipient as seen in Figs. 1-3, having at least two infra-red light emitting optic elements 16 and 18 mounted on first wall 1 and opposing second wall 12, at least two infra-red light receiving optic elements 16b and 20, when a container is placed in a cavity, as seen in Fig. 1, the optical paths are interrupted and the dispenser is actuated.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4 and 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,469,150 to Grimaldi.

Grimaldi shows a dispenser for automatically dispensing a beverage into a recipient as seen in Figs. 1-3, having at least two infra-red light emitting optic elements 16 and 18 mounted on first wall 1 and opposing second wall 12, at least two infra-red light receiving optic elements 16b and 20, the emitters and receiving elements are vertically aligned as seen in Fig. 2 generating crossing optical paths 16a and 15a intersecting at point 18 and in electromechanical communication with the dispensing system, when a container is placed in a cavity, as seen in Fig. 1, the optical paths are interrupted and the dispenser is actuated.

Grimaldi is silent about the light emitter and receiving optic elements mounted on the same wall. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to configure the light emitting and receiving optical element in any suitable mounting wall, since (the location of the emitters and receivers) in lieu of those use in the reference solves no stated problem and would be an obvious matter of design choice within the skill in the art. *In Re Kuhle*, 188USPQ 7 (CCPA 1975).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Early shows a container shape and detection system. Koblaz shows an ultrasound level detector. Beach shows a container chipped crown ring detector. Ducloux shows an apparatus for inspecting transparent objects. Stembridge shows an automatic control system for filling beverages containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 4/20/05

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